

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-TP-436
)	
RJM Communications, Inc.)	NAL/Acct. No.200332700026
Licensee of WGSR(AM) in Fernandina Beach,)	FRN 0008028938
Florida)	
Kalamazoo, Michigan)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 15, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find RJM Communications, Inc. (“RJM”), licensee of radio station WGSR, Fernandina Beach, Florida, apparently liable for a forfeiture in the amount of twenty-one thousand dollars (\$21,000) for willful and repeated violation of Sections 73.1125 and 73.1745(a) of the Commission's Rules (“Rules”) and willful violation of Section 73.3526(c)(1) of the Rules.¹ Specifically, we find RJM Communications, Inc. apparently liable for failure to maintain a presence at its main studio, exceeding authorized nighttime operating power, and failure to make available a public inspection file during regular business hours.

II. BACKGROUND

2. RJM is the licensee of AM broadcast station WGSR in Fernandina Beach, Florida. WGSR's station license authorizes daytime power of 10 kW and nighttime power of 30 watts.

3. On August 16, 2002, the FCC Enforcement Bureau's Tampa Field Office (“Tampa Office”) received a complaint alleging that WGSR failed to reduce transmitter power at the required times as specified in the station authorization.

4. On September 10, 2002, two agents from the Tampa Office monitored WGSR's signal. Field strength measurements revealed that WGSR did not reduce power at sunset as required by the station authorization. WGSR remained at daytime power until at least 10:00 p.m. Local sunset is 7:30 p.m. in September.

5. On September 11, 2002, the agents again monitored WGSR's signal. Field strength measurements revealed that WGSR did not reduce power at sunset as required by the station authorization. WGSR remained at daytime power until at least 9:03 p.m.

¹ 47 C.F.R. §§ 73.1125, 73.1745(a), and 73.3526(c)(1).

6. On September 12, 2002, the agents inspected radio station WGSR during regular business hours. The agents met with Mr. Joe Fisher, the only person present at WGSR, who assisted the agents during the inspection. Mr. Fisher told the agents that he was employed by Anscombe Broadcasting Group, LTD (“ABG”). ABG has held a local marketing agreement (“LMA”) with RJM since August 1, 2002. Mr. Fisher stated that RJM had no employee at the WGSR studio since August 7, 2002, at which time Mr. Fisher had fired the licensee’s only employee. Mr. Fisher stated that he operated the station’s transmitter manually and that he was not present at the transmitter site on the evenings of September 10 and 11, 2002, to make the transmitter power adjustments. The agents found the station’s transmitter operating at or about the authorized daytime power level. The agents again measured WGSR’s field strength during daytime hours and found the signal strength identical to the previous two nights’ measurements, thus verifying that the field strength measurements made during nighttime hours on the previous two nights corresponded to the station’s daytime power level. Upon the agents’ request to see the station’s public inspection file, Mr. Fisher was unable to provide any contents of the file.

III. DISCUSSION

7. Section 73.1125 requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station’s community of license; (2) at any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station’s community of license; or (3) within twenty five miles from the reference coordinates of the center of its community of license. In adopting the main studio rules, the Commission stated that the station’s main studio must have the capability to serve the needs and interests of the residents of the station’s community of license.² To fulfill this function, a station, among other things, must maintain a meaningful presence at its main studio.³ The Commission has defined a minimally acceptable “meaningful presence” as full-time managerial and full-time staff personnel.⁴ The licensee need not have the same staff person and manager at the studio, as long as there was management and staff presence there during normal business hours.⁵ Although management personnel need not be “chained to their desks” during normal business hours, they must “report at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base.”⁶ From August 7, 2002, until at least September 12, 2002, RJM failed to maintain managerial or staff presence at its main studio. WGSR’s main studio was staffed with an employee of another company with which RJM had an LMA to provide programming on WGSR.

8. Section 73.1745(a) states that no broadcast station shall operate at times, or with modes or power, other than those specified and made part of the license. On September 10 and 11, 2002, station WGSR operated with daytime power during nighttime hours.

² *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

³ *Id.*

⁴ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁵ *Id.*, 6 FCC Rcd at 3616 n.2; 7 FCC Rcd at 6800 n.4.

⁶ *Id.*, 7 FCC Rcd at 6802.

9. Section 73.3526(a)(2) of the Rules⁷ requires that every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. Section 73.3526(b) of the Rules⁸ requires the public inspection file be maintained at the station's main studio. Section 73.3526(c)(1) of the Rules requires the file be available for public inspection at any time during regular business hours. On September 12, 2002, no public inspection file material was available for inspection during regular business hours at the WGSR main studio.

10. Based on the evidence before us, we find RJM willfully⁹ and repeatedly¹⁰ violated Sections 73.1125 and 73.1745(a) of the Rules, and willfully violated Section 73.3526(c)(1) of the Rules by failing to maintain a presence at its main studio, exceeding authorized nighttime operating power, and failing to make available the public inspection file during regular business hours.

11. Pursuant to Section 1.80(b)(4) of the Rules,¹¹ the base forfeiture amount for failure to maintain a public inspection file is \$10,000, for exceeding authorized operating power is \$4,000 and for violation of main studio rule is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹² Considering the entire record and applying the factors listed above, this case warrants a \$21,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹³ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁴ RJM Communications, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-one thousand dollars (\$21,000) for willful and repeated violation of Sections 73.1125 and 73.1745(a) of the Rules, and willful violation of Section 73.3526(c)(1) of the Rules for failing to maintain a presence at its main studio, exceeding authorized nighttime operating power, and failing to make available the public inspection file during regular business hours.

⁷ 47 C.F.R. § 73.3526(a)(2).

⁸ 47 C.F.R. § 73.3526(b).

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹⁰ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

¹¹ 47 C.F.R. § 1.80(b)(4).

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80.

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, RJM Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

15. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to RJM Communications, Inc., 1218 S. Park Street, Kalamazoo, MI 49001.

FEDERAL COMMUNICATIONS COMMISSION

¹⁵ See 47 C.F.R. § 1.1914.

Ralph M. Barlow
Tampa Office, Enforcement Bureau

Attachment